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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12 **(HON. THOMAS J. WHELAN)**

13 UNITED STATES OF AMERICA, ) Case No. 07-CR-3210  
14 Plaintiff, ) Date: March 3, 2008  
15 v. ) Time: 2:00 p.m.  
16 **JOSE MACEDO-DE LA CRUZ,** )  
17 Defendant. )  
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**NOTICE OF MOTION AND MOTION  
TO:**

**DISMISS THE  
INDICTMENT FOR  
INVALID DEPORTATION;**

TO: KAREN HEWITT, UNITED STATES ATTORNEY, and  
REBECCA KANTER, ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE that on March 3, 2008 or as soon thereafter as counsel may be  
heard, the defendant, Jose Macedo-De La Cruz, by and through his counsel, Robert L. Swain,  
will move this Court to grant the above-entitled motion.

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## MOTION

The defendant, Jose Macedo-De La Cruz, by and through his counsel, Robert L. Swain, and pursuant to Rules 6(e), 12, and 16 of the Federal Rules of Criminal Procedure and the Fourth, Fifth and Sixth Amendments to the United States Constitution, and all applicable local rules, hereby moves this court to:

Dismiss the indictment for invalid deportation.

This motion is based upon the attached memorandum, the files and records in the above-captioned matter, the attached exhibits, and any and all other evidence brought before this court before or during the hearing on this motion.

Respectfully submitted,

Dated: February 15, 2008

/s/ Robert L. Swain  
**ROBERT L. SWAIN**  
Attorney for Defendant **Macedo de la Cruz**